***HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

+ WRIT PETITION NOs. 17179, 17576, 18744, 19262, 19263, 19264, 19265, 19266, 19267, 19268, 19272, 19273, 19274, 19275, 19276, 19277, 17800 and 20165 of 2005

% 13th September 2005

K.Kiran Kumar & others

…Petitioners

And

$ Union of India, rep. By its Secretary,

Medical & Health, New Delhi & others

…Respondents

! Counsel for the petitioners: Mr.Raghavan K.Thallapaka

^ Counsel for respondents : G.P. for Medical & Health,

Mr.D.V.Nagarjuna Babu, Standing

Counsel

< Gist:

> Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NOs. 17179, 17576, 18744, 19262, 19263,

19264, 19265, 19266, 19267, 19268,

19272, 19273, 19274, 19275, 19276,

19277, 17800 and 20165 of 2005

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Dated 13th September 2005

Between:

K.Kiran Kumar, aged 17 years, student,

Rep.by his father Sri K.Munirathnam S/o.K.Rosaiah,

R/o.Athur, Renigunta Mandal, Chittoor Dist.

& others.

…Petitioners

And

Union of India, rep. by its Secretary,

Medical & Health, New Delhi & others.

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NOs. 17179, 17576, 18744, 19262, 19263,

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19272, 19273, 19274, 19275, 19276,

19277, 17800 and 20165 of 2005

COMMON ORDER:

In this batch of writ petitions, the procedure adopted by the University of Health Sciences, in selecting the candidates for admission into the First Year of M.B.B.S and B.D.S courses, for the current academic year, against the seats reserved in favour of the physically handicapped candidates, is challenged.

Petitioners state that they have suffered handicap of one form, or the other, and that though they were entitled to be admitted against such seats, the respondents denied them the benefit, provided for under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, for short "the Act". While some petitioners have suffered handicap in the upper limbs, some others have suffered the same in the lower limbs. The handicap suffered by all the petitioners confined to locomotor disorders. There are no cases of visual, or hearing handicap.

In the common counter affidavit filed on behalf of the respondents, it is stated that the Government of India had issued instructions, through their letter dated 12.5.2004, to the effect that in the matter of admission into Medical and Dental courses, the benefit of reservation, in favour of physically handicapped candidates, shall be restricted only to those who have handicap to the lower limbs up to 50% to 70%, and that the other categories cannot be considered. The said instructions are said to be issued, on the basis of the decision taken by the Medical Council of India, through their circular dated 14.7.2003. It is also stated that in pursuance of the directions issued by the Medical Council of Indian and the Government of India, the respondent University had constituted a committee of experts, to assess the extent of disability of the candidates, and that the selections were made on the basis of such an assessment, in accordance with the circulars.

Learned counsel appearing for the petitioners and learned Standing Counsel for the University of Health Sciences, have made extensive submissions, touching on facts and law.

Before the Parliament enacted the Act, the matter of conferring benefits or providing reservation, in favour of physically handicapped candidates, was governed by the circulars issued by the State or Central Governments, from time to time. The Act provides for reservation of 3% of seats, in the matter of admission to the educational institutions, or employment in public agencies, under Sections 33 and 39 of the Act, respectively. The State Government has also issued instructions from time to time. The petitioners were issued certificates by the agencies, constituted under the relevant provisions, to the effect that they have suffered handicap. The percentage of handicap was also indicated.

The Act mandates that reservation of 3% of seats, in favour of physically handicapped candidates, shall be divided into three categories, *viz*. 1% percentage each in favour of the candidates suffering from visual, hearing and locomotor disorders. Learned counsel for the petitioners point out that though the Act, and the Rules made thereunder, stipulate that 40% disability shall be treated as the bench mark, for conferring the benefit, the respondents have ignored the same, and denied the benefits to the petitioners.

The grievance of the writ petitioners is that the procedure adopted by the respondents, in selecting the candidates for admission, against the seats reserved for physically handicapped candidates, is contrary to the provisions of the Act. It is true that the Act mandates that reservations in educational institutions be made in favour of physically handicapped candidates of different categories. Notwithstanding this mandate, the requirements of a course and the parameters of fitness of the candidates to study the course, cannot be ignored. For example, in respect of a course, for which the vision of a candidate is pivotal, reservation cannot be made in favour of visually handicapped candidates. Similarly, where the hands are required to be in perfect condition for a course, reservation cannot be provided for those who

have suffered any handicap in the upper limbs. The necessities, peculiar to the respective courses, assume predominance over the mandate to extend social protection to the physically handicapped candidates. At any rate, the petitioners have not challenged the circulars issued by the Medical Council of India and the Government of India, which restricted the benefit of reservation to the physically handicapped candidates to two courses, only to the disorders in the lower limbs.

All most all the petitioners in this batch of writ petitions are said to have suffered the disability, or disorder, in the lower limbs. Their grievance now, is mainly as to the method of assessment of the extent of handicap. All of them place reliance upon the certificates issued to them, by the District Medical Officers, or the other authorities recognized under the Act and Rules. However, once the relevant circulars mandate that the assessment of physical disability shall be undertaken, by an authority constituted by the University, the petitioners cannot fall back upon the certificates issued by the other authorities. No malafides, or other factors, are attributed against the agency constituted by the respondent University. Therefore, this Court does not find any basis, to find fault with the procedure adopted by the respondent University.

After the first phase of counseling, it has emerged that several seats, reserved in favour of the physically handicapped candidates, were unfilled, on account of non-availability of eligible candidates. The next phase of counseling is said to be due, from tomorrow onwards. No prejudice would be caused to any one, if the handicap of the petitioners, as well as other candidates appearing before the committee, is assessed once again.

For the foregoing reasons, the writ petitions are disposed of, directing the respondents to consider the case of the petitioners, along with other eligible candidates, in the matter of assessment of handicap, as well as selection of candidates, against the available seats reserved in favour of the physically handicapped candidates, in accordance with the circulars issued by the Medical Council of India and Government of India. There shall be no order as to costs.

13th September 2005

Note: L.R.Copies be marked.

(B/o)

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